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MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1006

JOHN F. GRAHAM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Claims

REPLY BRIEF OF PETITIONER

JOHN F. GRAHAM, *pro se*
2022 Columbia Road, N.W.
Washington, D. C.

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In its "Memorandum for the United States in Opposition" respondent contends that the United States Court of Claims was correct when it dismissed petitioner's suit against the United States on the ground that petitioner's suit was an action in tort and therefore beyond the jurisdiction of the Court of Claims. Respondent, however, does not appear to deny that respondent acted unconstitutionally in causing petitioner to be committed to St. Elizabeths Hospital as a person of unsound mind.

Contrary to what respondent implies, petitioner is not asking damages for false imprisonment, defamation and/or negligence. Petitioner's suit against respondent is an action in contract, the gravamen of the case being that St. Elizabeths Hospital failed to give petitioner enlightened care and treatment which, under a contract implied in fact, it was bound to do. The provisions of this contract are stated in 10 Stat. 682 (see petitioner's "Petition for a Writ of Certiorari," p. 5), and in the affidavit of Dale C. Cameron, M.D., superintendent of St. Elizabeths Hospital, dated July 11, 1967, which affidavit stated in respect to petitioner:

> In my capacity of Superintendent of Saint Elizabeths Hospital it is my duty and responsibility to make certain that each patient is afforded enlightened care and treatment.

It would therefore appear that, where a person committed to St. Elizabeths Hospital sues for the failure of the hospital to provide enlightened care and treatment, the suit is a valid action in contract.

In its "Memorandum in Opposition" respondent states:

> The Court of Claims has held that claims alleging illegal and improper confinement in a mental hospital, injury to reputation, and negligent treatment in a public hospital, are all tort claims and as such are beyond its jurisdiction.

In support of its position respondent cites *Grayson v. United States*, 141 Ct. Cl. 866; *Jarosz v. United States*, 179 Ct. Cl. 927; *Algonac Manufacturing Co. v. United States*, 428 F.2d 1241 (Ct. Cl.); *Minnick v. United States*,

177 Ct. Cl. 1098; *Bornhoft v. United States*, 137 Ct. Cl. 134, and *Norcutt v. United States*, 60 F. Supp. 266 (Ct. Cl.). *Grayson* and *Jarosz* pertain to illegal and improper confinement in a mental hospital; *Algonac*, *Minnick* and *Bornhoft* pertain to injury of reputation, and *Jarosz* and *Norcutt* pertain to negligent treatment in a public hospital. These cases, however, are immaterial to petitioner's case.

The thrust of petitioner's case is that he was of sound mind when he was committed to St. Elizabeths Hospital on January 4, 1966, and continued to be of sound mind unitl he was discharged from the said hospital on May 23, 1966. Petitioner was recommended for discharge from the hospital by the hospital's staff psychiatrists on March 17, 1966, but the hospital admits to administering 20 hours of therapy to petitioner during April and May, 1966; that is, for two months *after* petitioner had been recommended for discharge.

It is petitioner's contention that where a person is not, or ceases to be, a fit subject for confinement in a mental hospital, *any* treatment for a mental condition is in violation of the hospital's contract to provide such person with enlightened care and treatment. Petitioner further contends that involuntary psychiatric treatment administered to a person of sound mind is *brainwashing*, not therapy, and that, if the courts do not make this distinction, the Government has the license to subject any person by whom it is offended to psychiatric treatment, no matter what the person's mental condition may be. Indeed, that day may not be far off, for Government prosecutors, aware of the federal judiciary's faith in the occult, have long since learned to exploit judicial credulity. Under our system of jurisprudence arbitrary imprisonment,

physical torture and homicide are constitutionally acceptable, provided that it is emphasized the victim is receiving *treatment*; under our system of jurisprudence the Rule of Law has been replaced by the Rule of Magic, and its justification is psychiatry.

In the genre of the occult, psychiatry is the American counterpart of voodoo. (See *The Mind Game: Witchdoctors and Psychiatry*, E. Fuller Torrey, M.D., New York: 1972.) Unlike voodoo, however, psychiatry is well organized. In the American Psychiatric Association it has its Sanhedrin; its stock in trade is "mental illness."

Although no one can define mental illness, the term is sufficiently esoteric to frighten the bravest of men. Confronted by mental illness, a learned jurist becomes like a schoolboy walking alone through a night-enshrouded graveyard. No schoolboy will admit that he believes in ghosts, and no jurist will admit that the mentally ill are possessed by evil spirits, or that psychiatrists are the exorcists. But one never knows for sure, and it's the better part of valor to stay on the psychiatrists' good side – just in case.

One learned jurist who has proclaimed himself the friend of psychiatry's wizards is Mr. Justice Douglas. In *Robinson v. California*, 370 U.S. 660, 676 *et seq.*, he said in respect to drug addicts:

> The addict is a sick person. He may, of course, be confined for treatment for the protection of society. Cruel and unusual punishment results not from confinement but from convicting the addict of a crime. *** A prosecution for addiction, with its resulting stigma and irreparable damage to the good name of the

> accused, cannot be justified as a means of protecting society, where a civil commitment would do as well. *** We would forget the teachings of the Eighth Amendment if we allowed sickness to be made a crime and permitted sick people to be punished for being sick. This age of enlightenment cannot tolerate such barbarous action.[1]

Not far behind Mr. Justice Douglas is Mr. Chief Justice Burger. In an article, "Psychiatrists, Lawyers and the Courts," *Federal Probation*, June 1964, at p. 9, he proposed that, after a jury had found the accused guilty, psychiatrists would meet (presumably *in camera*) to decide whether or not the accused was mentally ill. He said:

> Under such a system the "guilty" defendant could be committed by the trial judge to the custody of the government for an indeterminate period for such medical treatment, psychiatric therapy, discipline, and vocational training as would help him and rehabilitate and restore him to a useful life. He would remain in custody until he was determined to

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[1] Mr. Justice Douglas appears to lack a fundamental grasp of criminal law. There is a vast difference between an illness induced by circumstances over which the person afflicted has no control and an illness which is self-induced. If it is an offense against the State to induce a drug addiction in another person it is no less an offense to induce a drug addiction in oneself. Whether or not a drug addict is sick (and the proposition that drug addiction is a "sickness" is certainly questionable) the person with a self-induced drug addiction is culpable, morally and legally, for the burden he has imposed on the State.

> be sufficiently improved so that it was reasonably certain his release would not be dangerous to society or to himself. Some will protest this might mean a life sentence. The answer to this is that society's protection and the defendant's own welfare outweighs his right to absolute freedom.

For a jurist, sworn to uphold the Constitution, to make a proposal such as that made by the Chief Justice is astonishing; it is doubly astonishing when he acknowledges in the very same article that some, if not all, psychiatrists are liars. At. p. 7 the Chief Justice wrote:

> I have heard psychiatrists frankly say that if they conclude that their patient is ill and in need of treatment, they consider it their professional obligation to try to make certain that he goes to a mental institution rather than a prison, even if it is necessary to "tailor" their expert testimony to accomplish that end. *** I have seen far too many cases in which the psychiatric testimony, when carefully analyzed, developed somewhat along these lines: the patient (and of course he is primarily a patient to the examining psychiatrist) is assumed to have committed the stated antisocial acts; such acts are symptoms of emotional disturbance or mental disorder; ergo the patient has a mental disorder.[2]

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[2]The Chief Justice is not to be faulted for his adherence to the Rule of Magic. Sir Matthew Hale, one of England's greatest jurists, and Sir Thomas Browne, one of England's most famous physicians, believed in witchcraft; it is not unreasonable, therefore, that in our own age eminent men would place their faith in psychiatry.

If psychiatrists will lie to get a person committed to a mental hospital the probability is that they will lie to keep him there. And since, under our system of jurisprudence, it is sacrilege to question psychiatric infallibility, the psychiatrists can, with no fear of criticism, keep their "patient" in solitary confinement, beat him, electrocute him, and occasionally kill him.

Mental patients under treatment die at a flagrant rate, but evidently in the judicial view it is better that a mental patient find salvation through death than to be possessed. (At the beginning of fiscal 1972 there were 313,012 resident patients in the nation's state and county mental hospitals; at the end of the year 23,282, or 7.43%, had died. The national rate of death in relation to population is 0.93%.) In *Prisoners of Psychiatry*, New York: 1972, p. 41 *et seq.*, Bruce J. Ennis says:

> In my year and a half with the Civil Liberties Union, I had heard or seen ample evidence of cruel, even fatal, mistreatment in mental hospitals. I knew that mental patients were often beaten senseless by drunk or vicious attendants. *** I knew of one obstreperous patient who was first strapped to her bed by five attendants and who then had a wet pillowcase put over her head until she ceased to struggle. True, the attendants did not mean to kill her. The hospital director told the county medical examiner, "We would be satisfied with a report of death by exhaustion."

At p. 102 *et seq.* Ennis describes his tour of Bryce State Hospital in Tuscaloosa, Alabama:

> Three of the ward's patients had been locked in nine-by-nine-foot solitary isolation cells for

> eleven days for trying to escape. Each of these cells had a ceiling light bulb, and a mattress and bedding on the floor (no bed frame) – nothing more. The cells, which had no toilets or sinks, gave off an overpowering smell of urine. *** My escort admitted that the three were locked in isolation not as therapy but as punishment. I asked when they would be released, and he replied that the hospital would "try to review the cases sometime during the next week." But he admitted that they could be held in solitary for weeks, or even months.

Psychiatric treatment of the mentally ill at St. Elizabeths Hospital was described in the *Washington Post*, July 17, 1972, p. C-3

> There are those whose work at John Howard [the St. Elizabeths maximum security unit] has convinced them that the facility offers little in the way of patient therapy. "It used to be a victory for a lawyer to get his client off by pleading insanity," said one attorney who works with the hospital branch of the Public Defenders Service. "But now a district attorney feels he's gotten his pound of flesh if he gets you into the hospital. Some of those patients – particularly those charged with misdemeanors – are winding up at John Howard for longer than if they had been convicted and served their sentence." *** For the very assaultive patients there are tranquilizing drugs and, if all else fails, the seclusion room, where patients are locked in a small 4-foot by 7-foot rectangular area containing just a bare mattress. They

> have to be escorted to the bathroom. Sometimes, unusually combative patients get what is known as "special treatment." This means they are handcuffed and often put in leg chains and then confined in a seclusion room where they can have no visitors until their behavior improves.

Where other methods of exorcism seem inadequate, psychiatrists rely on electric convulsive therapy. This treatment, as it was administered to one hapless sinner in a private mental hospital in the Midwest, was described in an article by Elizabeth Wertz in the *Potomac* section of the *Washington Post*, December 10, 1972, p. 36 *et seq.*:

> She tried to "be good," so that she would get out of the hospital. The only way she knew to be on her good behavior was to behave the same way she would at a dinner party she did not want to attend but felt she should for her husband's sake. *** Stand up straight, smile, and be interested in the other person. *** Torn between her terror of the treatments and her feelings for her husband, she really didn't like herself when she broke down and told me about her fears. *** She asked her husband, very politely, to discontinue the shock treatments. She asked the chief of the clinic, too. They pretended not to hear her. Anne no longer owned her body, her head, or her own soul. She had no voice at all in what happened to her. *** Morning. Breakfast came for me and none for Anne. This is the signal that one is going to get a treatment, no breakfast. Anne

was white. She had no expression at all. Outside the room, everything was bustle and busyness. *** When the treatments were over that day, everything was quiet again. The psychiatrists were gone, the attendants were gone. The hall was nearly empty. All that remained to show for the morning's great burst of energy was a corpse, wrapped in a sheet, lying on a high cart. It was Anne. Alone she had gone to her treatment, to her death.

Respectfully submitted,

JOHN F. GRAHAM, *pro se*
2022 Columbia Road, N.W.
Washington, D.C.